

PROGRAM REQUIREMENTS

for

PLAYGROUND COMPLIANCE CONTRACTS (General Fund)

GPCF

**CHILD DEVELOPMENT CENTER-BASED
PROGRAMS**

May 1, 2003 through June 30, 2005

PROGRAM REQUIREMENTS FOR PLAYGROUND COMPLIANCE CONTRACTS FOR CHILD DEVELOPMENT CENTER-BASED PROGRAMS

The goal of this one-time-only funding is to bring playgrounds into compliance with playground safety regulations, thereby reducing the number and severity of childhood injuries on playgrounds as well as making playgrounds more accessible to children with disabilities.

This contract is funded through a special appropriation from the General Fund pursuant to Chapter 704, Statutes of 2000 (SB 1703 - Escutia).

The playground compliance funds must be used to enable agencies to comply with *Health and Safety Code*, California Code of Regulations, and/or the Americans with Disabilities Act (ADA). The specific *Health and Safety Code* sections are 1596.70 through 1596.879 and Sections 115725 through 115750. The specific California Code of Regulations sections are found in Title 22: Division 12, Chapter 1; and Division 4, Chapter 22; which incorporate by reference the "Handbook for Public Playground Safety" (Pub. 325), and Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, (ASTM), Publication Designation: F 1487-98.

The following program requirements are provided to assist the contractor in meeting the legislative intent. Each contractor is required, as a condition of its contract with the California Department of Education (CDE), Child Development Division (CDD), to adhere to these requirements and California Code of Regulations, Title 5, pertaining to Child Development Programs, in addition to all other applicable laws and regulations. Any variance from these requirements, the applicable Title 5 regulations and laws, could be considered a noncompliance issue and subject the contractor to possible repayment of disallowed costs.

Addition of new projects or deletions to projects identified in the original application must be requested in writing to the CDD and approved in advance.

I. GENERAL PROVISIONS

A. National Labor Relations Board/Federal Court Order

By signing this contract, the contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court has been issued by a federal court against the contractor within the last two (2) years because of failure to comply with a federal court order for compliance with an order of the National Labor Relations Board (Public Contract Code Section 10296). This provision does not apply to public entities.

B. Notification of Address Change

Contractors shall notify the CDD in writing of any change in mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied by (1) board minutes verifying the change in address, and (2) a copy of the notification to the Internal Revenue Service of the address change.

Contractors shall notify the CDD in writing of any proposed change in operating facility address(es) at least thirty (30) calendar days in advance of the change, unless such change is required by an emergency, such as fire, flood, or earthquake.

C. Open Board Meetings

Any private tax-exempt or private non tax-exempt agency receiving public funds under these regulations must, to the extent of the publicly-funded program, comply with the Ralph M. Brown Open Meetings Act ("Brown Act"), Government Code Sections 54950-54961. Board meetings shall be open to the public, except for meetings with its designated representatives, prior to and during consultations and discussions with representatives of employee organizations regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of employees; or to consider the appointment, employment, evaluation of performance or dismissal of an employee; or to hear complaints or charges brought against an employee, unless such employee requests an open meeting. Minutes of these open meetings shall be available to the public.

D. Issuance and Use of Checks

Except for external payroll services, private contractors shall not use any pre-signed, pre-authorized, or pre-stamped checks without the prior written approval of the CDD.

Private contractors shall require two (2) authorized signatures on all checks unless: (1) the contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount; and (2) the annual audit verifies that appropriate internal controls are maintained.

E. Prohibition Against Loans and Advances

Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies, or private agencies. Contractors shall not advance unearned salary to employees. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received.

F. Materials Developed with Contract Funds

If the contractor receives income from materials developed with contract funds, the use of the income shall be restricted to the child development program. If the materials were developed in part with contract funds, the income from the sale of the materials that shall be used in the child development program shall be computed in direct proportion to the share of the contract funds used in development of the materials.

Materials developed with contract funds shall contain an acknowledgement of the use of state funds in the development of materials, and a disclaimer that the contents do not necessarily reflect the position or policy of the CDE.

G. Contractor's Termination for Convenience

1. General Termination for Convenience

A contractor may terminate the contract for any reason during the contract term. The contractor shall notify the CDD of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.

Within fifteen (15) days from the date the contractor notifies the CDD of its intent to terminate the contract, the contractor shall submit a current inventory of equipment purchased in whole or in part with contract funds.

Upon receipt of a notice of intent to terminate, the CDD will transfer the program to another agency as soon as practicable.

The state shall only be obligated to compensate the contractor for net reimbursable program costs in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The state shall offset any monies the contractor owes the state against any monies the state owes under this contract.

2. Changes in Laws or Regulations

The CDD shall notify contractors in writing of changes in laws or regulations prior to the effective date or as soon as possible after enactment. If any laws or regulations are changed substantially during the contract period, the contractor shall have the option to discontinue performance and be relieved of all obligations for further performance.

The contractor has thirty (30) calendar days from receipt of notification of pending changes to notify the CDD in writing of the contractor's intent to terminate if the required changes are unacceptable to the contractor. The contract shall be deemed terminated sixty (60) calendar days after receipt of the notification of the intent to terminate.

H. Applicability of Corporations Code

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the Corporations Code, including standards of conduct and management of the organization.

I. Conflicts of Interest

For any transaction to which the contractor is a party and the other party is: (a) an officer or employee of the contractor or of an organization having financial interest in the contractor; or (b) a partner or controlling stockholder or an organization having a financial interest in the contractor; or (c) a family member of a person having a financial interest in the contractor, the transaction(s) shall be fair and reasonable, and conducted at arm's length.

Based on corporate law (Corporations Code Sections 310, 5233-5234, 7233 and 9243 as applicable) the general rules that would be followed to ensure that transactions are conducted "at arm's length" include: (1) prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed; and (2) all parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes.

If the transaction involves the renting of property, either land or buildings, owned by affiliated organizations, officers, or other key personnel of the contractor or their families, the board of directors shall request the interested party to obtain a "fair market rental estimate" from an independent appraiser. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance. Any transaction described in this paragraph shall be disclosed by the auditor in the notes to the financial statement in the annual audit.

Rental costs for equipment owned by affiliated organizations, officers, or other key personnel of the contractor or their families are allowable only as use or depreciation allowance.

J. Americans with Disabilities Act

By signing this contract, the contractor assures the CDE that it shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.), as well as all applicable federal and state laws and regulations, guidelines, and interpretations issued thereto.

K. Air or Water Pollution Violations (Government Code Section 4477)

By signing this agreement, the contractor swears under penalty of perjury that the contractor is not: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution. This provision does not apply to public agencies.

L. Recycled Paper Certification (Public Contract Code Section 10308.5/10354)

The contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post-consumer material and secondary material as defined in Public Contract Code Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content.

M. Child Support Compliance (Public Contract Code Section 7110)

By signing this agreement, the contractor acknowledges that (a) it recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement including, but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with Section 5200) of part 5 of Division 9 of the Family Code; and (b) to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

N. Unlawful Denial of Services (Government Code Section 11135)

No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

As used in this section, “disability” means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of an impairment as described in paragraph (1); or (3) being regarded as having an impairment as described in paragraph (1).

O. Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

P. Union Organizing and Activities

Contractor, by signing this agreement, hereby acknowledges the applicability to this agreement of Government Code Section 16645 through Section 16649.

1. Contractor will not assist, promote, or deter union organizing by employees performing work on a state service contract, including a public works contract.
2. No state funds received under this agreement will be used to assist, promote, or deter union organizing.
3. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state property is equally available to the general public for holding meetings.
4. If the contractor incurs costs or makes expenditures to assist, promote, or deter union organizing, the contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs. The contractor shall provide these records to the Attorney General upon request.

Contractor hereby certifies that no request for reimbursement or payment under this agreement will seek reimbursement for costs incurred to assist, promote, or deter union organizing.

II. EQUIPMENT

A. Equipment Bidding Requirements

For private agencies, the contractor must obtain at least three (3) bids or estimates for all equipment purchases exceeding five thousand dollars (\$5,000, including tax). The contractor shall purchase the goods or services from the lowest responsible bidder. If three (3) bids or estimates cannot be obtained, the contractor shall provide maintain documentation of the reason(s) why three (3) bids or estimates could not be obtained (e.g., emergency situations). Public agencies shall comply with applicable sections of the *Public Contract Code*.

Equipment replacement and lease-purchase agreements are subject to the above requirements.

B. Equipment Inventory

Property records must be maintained that include a description of the equipment, serial number or other identification number, the source of the equipment, the acquisition date, the cost of the equipment, the location, use and condition of the equipment, and any ultimate disposition date, including date of disposal and sale price if applicable. A physical inventory of equipment must be taken at least every two years and reconciled with property records. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft (any loss, damage, or theft must be investigated), and adequate maintenance procedures must be developed to keep the equipment in good condition.

C. Title, Use, Disposition, and Retention

1. Title - When equipment is purchased with state funds, title shall vest in the contractor only for such period of time as the contractor has a contract with the CDD.
2. Retention - The CDD may provide written authorization for the contractor to retain the equipment for the contractor's own use if a fair compensation is paid to the state for the state's share of the cost of the equipment. Fair compensation shall be determined as prescribed in Title 5, California Code of Regulations, Chapter 19, Section 18025(b).
3. Use - When equipment is purchased, in whole or in part, with state funds, the contractor shall use the equipment exclusively in the program(s) from which funds were used to purchase the equipment. If the contractor wishes to share the use of the equipment between/among two (2) or more programs, the cost of such equipment shall be prorated between/among the programs.
4. Disposition - If the contractor no longer has a contract with the CDE, the contractor shall dispose of the equipment in accordance with written direction from the CDD.

III. SUBCONTRACTS

A. Subcontracts Excluded from Requirements of this Section

The following types of relationships are not subject to the requirements contained in Section III: (1) employment agreements; (2) facility rental or lease agreements; (3) payment arrangements with providers; (4) medical or dental service agreements; (5) bookkeeping/auditing agreements, except for contractors that fall under the provisions of Section III.B below; (6) janitorial and groundskeeping agreements; (7) a subcontract with a public agency; and (8) subcontracts with an individual for less than ten thousand dollars (\$10,000), except for contractors that fall under the provisions of Section III.B.

However, no subcontract shall in any way relieve the contractor of any responsibility for performance under this contract.

All subcontracts, rental agreements, and other contractual arrangements should include a termination for convenience clause permitting termination of such agreements without cost to the contractor.

B. Bids for Subcontracts

Private contractors shall obtain at least three (3) bids or estimates for subcontracts that exceed five thousand dollars (\$5,000). The subcontract shall be awarded to the lowest responsible bidder. If three (3) bids or estimates cannot be obtained, the private contractor shall maintain documents that establish the reasons why three bids or estimates could not be obtained and the reasonableness of the proposed expenditure without three bids or estimates. Public agencies shall award subcontracts in accordance with the *Public Contract Code*. The contractor shall not split subcontracts to avoid competitive bidding requirements.

Subcontracts for auditing and/or bookkeeping services shall be rebid and changed every five (5) years unless retention of the same auditor is approved by the OEA.

C. Required Subcontract Provisions

Every subcontract shall specify:

1. The dates within which the subcontractor is to perform the contract. The time for subcontractor performance shall not begin prior to, nor shall the time extend beyond, the time period of the contract between the contractor and the state.

2. The dollar amount of the subcontract, or specify an amount not to exceed a maximum dollar amount.
3. The service(s) to be provided under the subcontract.
4. The responsibilities of each party under the subcontract.
5. That the subcontractor and agents and employees of the subcontractor, in the performance of the subcontract, are acting in an independent capacity and not as officers, employees, or agents of the State of California.
6. That modifications of the subcontract shall be in writing.
7. That the subcontract is the complete and exclusive statement of the mutual understanding of the parties, and that the subcontract supersedes and cancels all previous written and oral agreements, and communications relating to the subject matter of the subcontract.
8. Remedies, in case of a breach of contract, for subcontracts in excess of ten thousand dollars (\$10,000).
9. That the State of California retains title to any equipment or supplies purchased with state funds and that the equipment shall be returned to the contractor upon termination of the subcontract. The subcontract shall also specify that the subcontractor shall obtain prior written approval from the contractor and the CDD for any unit of equipment that costs in excess of seven thousand five hundred dollars (\$7,500).
10. That the subcontractor shall be reimbursed for travel and per diem expenses only at rates that do not exceed the rates paid to the CDE's nonrepresented employees computed in accordance with State Department of Personnel Administration regulations, Title 2 California Code of Regulations, Subchapter 1.
11. That the subcontractor agrees to indemnify and hold harmless the State of California, its officers, agents, and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of the subcontract, and from any and all claims and losses occurring or resulting to any person, firm, or corporation that may be injured or damaged by the subcontractor in the performance of the subcontract.
12. For management and/or direct service subcontracts, the subcontractor shall maintain records for program review, evaluation, audit and/or other purposes and make the records available to agents of the state for a period of five (5) years.
13. The provisions of the "Nondiscrimination Clause" included in the prime contract as specified in Title 2 California Code of Regulations, Chapter 5, Section 8107.

D. Recommended Subcontract Provisions

The following items are suggested for inclusion in subcontracts to protect the interests of the contractor:

1. Funding of the subcontract should be made subject to the appropriation and availability of funds from the state.
2. All subcontracts should contain a provision that the subcontractor is liable for any audit exception caused by, or as a result of, the subcontractor's lack of performance as required by the subcontract.
3. The subcontract should provide that the subcontractors, its agents, and its employees, in the performance of the subcontract, are acting in an independent capacity and not as agents or employees of the contractor.

4. The consideration paid to the subcontractor, as provided in the subcontract, should be stated to be the full compensation for all the subcontractor's expenses incurred in the performance of the subcontract.

E. Audit Requirements for Subcontracts

Subcontracts for management and/or other services shall be audited in accordance with CDE Audit Guidelines. The cost of the audit shall be reimbursable and shall be borne by the contractor, either directly or as an allowance in the subcontract. The audit of the subcontract shall be submitted to the CDE's Audits and Investigations Division, along with the contractor's audit as specified on the face sheet of the contract.

IV. CONTRACTOR RESPONSIBILITIES

A. Use of Funds

Eligible playground compliance projects include but are not limited to:

1. renovation or replacement of unsafe play structures, surfacing, fencing, internal pathways, signs, and outdoor storage sheds;
2. repair or installation of playground equipment that is accessible to children with disabilities;
3. installation of outdoor drinking fountains;
4. repair unsafe sidewalks or internal landforms;
5. planting trees or installation of shade structures in outdoor areas;
6. relocation of play equipment within the playground area to meet height and spacing requirements; and
7. installation of guard rails on elevated structures to prevent falls.

B. Costs and Reimbursement

Reimbursable costs **must** be incurred during the contract period. Contractors shall not use contract funds to pay for prior obligations.

1. Nonreimbursable Costs

The funds may **not** be used to pay for:

- a) the direct provision of child care services;
- b) purchase or construction of a child care facility;
- c) purchase, lease, or improvement of land;
- d) the initial playground inspection conducted by a certified playground safety inspector;
- e) improvements to playgrounds beyond those necessary to meet health and safety requirements;
- f) reimburse an agency for expenses incurred in the preparation of this application;
- g) modification of an existing playground for the purposes of program expansion;
- h) purchase of equipment or supplies to meet curriculum needs;
- i) extension of sewer lines;
- j) replacement, relocation, or purchase of portable buildings;

- k) renovation of libraries, staff rooms, or other areas that do not serve families or children;
- l) expenses incurred for meetings, workshops, training, food, or beverages;
- m) overhead expenses such as costs for rental/lease of space utilities, office supplies, and other miscellaneous project costs; or indirect costs;
- n) personnel costs for administration of these projects, including project management;
- o) interest charges or payments on bonds or indebtedness required to finance project costs;
- p) bonus payments for early completion of work;
- q) fines or penalties incurred because of violation of federal, state, or local laws, ordinances, or regulations;
- r) travel or per diem expenses;
- s) costs connected with contractor claims against the grantee; or
- t) costs incurred prior to the execution of the Local Agreement for Child Development Services contract.

In addition, these funds shall not be used for any purpose considered nonreimbursable pursuant to Title 5, California Code of Regulations, Chapter 19, Section 18035. The following costs shall not be reimbursable under the child development contract:

- a) bad debts, including losses arising from uncollectible accounts and any related legal costs. Uncollected parent fees are not considered to be bad debts if documentation of collection attempts exists;
- b) contributions;
- c) costs of amusement or entertainment;
- d) costs of fines or penalties;
- e) costs incurred after the contract has been terminated;
- f) investment management costs;
- g) costs of organization of a nonprofit corporation, such as incorporation fees or consultant fees;
- h) public relations consultant fees;
- i) costs of legal, consulting, and accounting services incurred in prosecution of claims against the state;
- j) state and federal income taxes;
- k) bonuses, unless part of a collective bargaining agreement;
- l) compensation to the members of the board of directors except for: (1) reimbursement for travel and/or per diem, computed in accordance with Title 5, California Code of Regulations, Chapter 19, Section 18034, incurred while the members are conducting business for the organization; and (2) as provided in the *Corporation Code*, Section 5227, et seq.;

m) costs of subcontracts which increase cost or subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-costs.

2. Reasonable and Necessary Costs

Contractors will be reimbursed for actual costs that are reasonable and necessary to the performance of the contract. "Reasonable and necessary costs" means expenditures that, in nature and amount, do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business.

C. Reporting Requirements

1. Report of Expenditures

These are one-time-only funds that are available for expenditure after May 1, 2003, and prior to June 30, 2005. Reports of expenditures are due to CDE, Child Development Fiscal Services, upon expenditure of funds, but no later than July 20, 2003, for expenditures in fiscal year 2002-2003, July 20, 2004, for expenditures in fiscal year 2003-2004, and July 20, 2005, for expenditures in fiscal year 2004-2005.

The expenditure report must be made using Form CDFS 9529. Please submit the report directly to your assigned fiscal analyst at:

California Department of Education

Child Development Fiscal Services

P.O. Box 1317

Sacramento, CA 95812-1317

If there are questions regarding the appropriateness of a proposed expenditure, please contact Marie L. Murata, Consultant, Policy, Program, and Legislation Development, at (916) 322-4269.